

AUG 06 2018

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**BEFORE THE
STATE OF FLORIDA
COMMISSION ON ETHICS**

CONFIDENTIAL

In re: Kimberly Daniels,

Respondent.

Complaint No. 18-026

ADVOCATE'S RECOMMENDATION

The undersigned Advocate, after reviewing the Complaint and Report of Investigation filed in this matter, submits this Recommendation in accordance with Rule 34-5.006(3), F.A.C.

RESPONDENT/COMPLAINANT

Respondent, Kimberly Daniels, served as a member of the Jacksonville City Council and currently serves as a member of the Florida House of Representatives. Complainant is Robert Hall of Jacksonville, Florida.

JURISDICTION

The Executive Director of the Commission on Ethics determined that the Complaint was legally sufficient and ordered a preliminary investigation for a probable cause determination as to whether Respondent violated Article II, Section 8, Florida Constitution, and Section 112.3144, Florida Statutes. The Commission on Ethics has jurisdiction over this matter pursuant to Section 112.322, Florida Statutes.

The Report of Investigation was released on July 2, 2018.

ALLEGATION ONE

Respondent is alleged to have violated Article II, Section 8, Florida Constitution, and Section 112.3144, Florida Statutes, by filing an inaccurate 2012 CE Form 6, "Full and Public Disclosure of Financial Interests."

APPLICABLE LAW

Article II, Section 8 Florida Constitution provides:

(a) All elected constitutional officers and candidates for such offices and, as may be determined by law, other public officers, candidates, and employees shall file full and public disclosure of their financial interests.

* * *

(i) Schedule—On the effective date of this amendment and until changed by law:

(1) Full and public disclosure of financial interests shall mean filing with the secretary of state by July 1 of each year a sworn statement showing net worth and identifying each asset and liability in excess of \$1,000 and its value together with one of the following:

* * *

Section 112.3144(1), Florida Statutes, provides as follows

(1) An officer who is required by s. 8, Art. II of the State Constitution to file a full and public disclosure of his or her financial interests for any calendar or fiscal year shall file that disclosure with the Florida Commission on Ethics.

ANALYSIS

Complainant alleges that Respondent failed to disclose assets and liabilities on her 2012-2014 (includes 2012, 2013, and 2014) financial disclosure forms.¹ (ROI 3, Exhibit A) Specifically, it is alleged that Respondent owes approximately \$1,000,000 in mortgages on

¹ In 2015, Complainant filed a complaint, #15-113, regarding these same allegations. Due to a procedural issue, that complaint was dismissed. The instant complaint, #18-026, incorporates the previous complaint, #15-113. Respondent has chosen to rely on the statements she made in 2016 during the investigation of the previous complaint. (ROI 4-6)

properties in Broward and Duval counties plus she owns time-share properties in Daytona Beach and Orlando. (ROI 3)

The instructions for disclosing assets on CE Form 6 generally state that a description for each asset on the reporting date chosen for your net worth (Part A), that is worth more than \$1,000 and that is not included as household goods and personal effects, and its value should be disclosed. The instructions for CE Form 6 require the disclosure of a liability (creditor) in excess of \$1,000 as of the reporting date chosen by Respondent. If the asset or liability is held jointly, then the interest to be disclosed is the legal percentage of ownership.

From 2011 through 2015, Respondent served as a City Council At-Large Group 1 member in Jacksonville. (ROI 7) Respondent is currently serving as a member of the Florida House of Representatives. (ROI 7) In addition, Respondent is the founder and president of Spoken Word Ministries, Inc. plus she is the owner and president of Kimberly Daniels Ministries International, Inc. (ROI 8) Respondent advised that Spoken Word Ministries receives all of the income from both entities. (ROI 8) Spoken Word Ministries has eight corporate officers including Respondent and Kimberly Daniels Ministries has six corporate officers including Respondent. (ROI 10) Five of the corporate officers are members of the boards of both Spoken Word Ministries and Kimberly Daniels Ministries. (ROI 10) However, Respondent advised that she has “a lot of authority” as a member of the Spoken Word Ministries’ Board of Directors. (ROI 8)

Respondent’s 2012-2014 CE Form 6s do not reflect any time-share, real property assets, or any mortgage liabilities. (ROI 11, Exhibit A) Respondent advised that she had no assets or liabilities in her name during 2012-2014. (ROI 13) She further advised that she owned no other businesses or churches during 2012-2014 other than a boutique which was not profitable. (ROI 9)

The Broward and Duval County Property Appraiser's Offices, respectively, reflect that the properties listed below were owned by Kimberly Daniels, Spoken Word Ministries, or Spoken Word Ministries during 2012-2014. (ROI 12)

Property owned by Kimberly Daniels:
9197 Camshire Drive, Jacksonville

Property owned by Kimberly Daniels Ministries:
121 Schooner Key Place, Jacksonville

Property owned by Spoken Word Ministries:
2819 Myrtle Avenue, Jacksonville
14445 Steele Street, Jacksonville
Moncrief Road, Jacksonville
Moncrief Road, Jacksonville
5638 Moncrief Road, Jacksonville
0 105th Street, Jacksonville
11881 Piccadilly Place, Davie.

Respondent advised that she has never made mortgage payments for the properties listed in the complaint, explaining that the church pays the mortgage. (ROI 14) She advised that she is one of the guarantors for her church because the loan companies hesitate to grant loans to churches because a church can dissolve at any time. (ROI 14) She further advised that the church has three other guarantors for church liabilities. (ROI 14) She acknowledged that as a guarantor, if the church failed to make payments for the property, then she would be responsible for making payments herself. (ROI 14)

The CE Form 6 instructions state that contingent liabilities are not required to be listed and defines a contingent liability as "one that will become an actual liability only when one or more future events occur or fail to occur, such as where you are liable only as a partner (without personal liability) for partnership debts, or where you are liable only as a guarantor, surety, or endorser on a promissory note." Based on Respondent's testimony, it appears the mortgages could be

considered contingent liabilities which are exempt from disclosure. However, further discovery may find otherwise.

Respondent advised that the church pays the premiums for the \$1 million-dollar life insurance policy she disclosed as an asset on her 2012-2014 CE Form 6s. (ROI 15, Exhibit A) She advised that the church is the beneficiary and maintains the policy because she is the “face” of the church and her death could affect the church’s income. (ROI 15) Based on the information provided by Respondent, it appears that the church is the “owner” of the life insurance policy which makes her listing the policy as a personal asset questionable.

Respondent’s previous counsel provided a copy of the Final Judgment of Dissolution of Marriage with Property between Respondent and her former husband, Ardell Daniels, which is dated May 3, 2016. (ROI 23, Exhibit G) The case includes Spoken Word Ministries as a third-party defendant. (Exhibit G-1) The parties’ Marital Settlement Agreement (MSA) and Partial Mediation Agreement (PMA) were provided as well. (Exhibit G-2, G-9) These documents contain information that appears to contradict Respondent’s assertion that she had no reportable interests regarding assets or liabilities to disclose on her forms and property appraisers’ records. In the MSA, the property located at 11881 Piccadilly Place is reflected as being owned by Spoken Word Ministries; however, the agreement states that the property will be sold with the proceeds split between Respondent, receiving 25%, and Ardell, receiving 75%. (ROI 23, Exhibit G-4) While it is interesting that Respondent and her husband are splitting the proceeds from a church asset, the property appraiser’s office listed the Piccadilly property as belonging to Spoken Word Ministries from 2012-2014, thus, it appears that it did not meet the criteria for disclosure.

The MSA includes language regarding the proceeds from the sale of the 9197 Camshire Drive property which is listed by a property appraiser as owned by Respondent. (ROI 12, 23,

Exhibit G-4) The PMA addresses a Wells Fargo home equity loan to Respondent and Ardell regarding the Camshire property, stating that the loan shall be refinanced by Respondent in 120 days and Ardell's name removed or the property should be sold. (ROI 23, 24, Exhibit G-9, G-18) A Duval Clerk of Courts record reflects that Respondent and Ardell received a home equity line of credit on the Camshire property in 2008 of up to \$104,000. (ROI 23 Note, Exhibit H) Since the property appraiser's office listed the Camshire property as belonging to Respondent, it can be presumed that Respondent's interest in the property was an asset to be disclosed on her 2012-2014 CE Form 6s, respectively. (ROI 12) Respondent's portion of the debt from the home equity line of credit should have been a liability disclosed on her 2012-2014 CE Form 6s, respectively.

Respondent advised that Spoken Word Ministries has owned time-shares in Orlando and Daytona Beach since 2002 or 2003. (ROI 16) She stated, "The church pays the bills [for the time-shares]." (ROI 15) The aforementioned PMA states that Ardell will have ownership of time-shares listed in Respondent's or the corporation's name. (ROI 23, Exhibit G-9)

There are four known time-shares at issue.

1. Contrary to Respondent's testimony, Gayle Anderson, Owner Relations Correspondence Manager at Westgate Resorts, advised that Respondent and her husband have owned the time-share, not Spoken Word Ministries, since 1999 for every even year. (ROI 17, Exhibit B) Anderson advised that the time-share was worth \$14,340 in 2012 and \$15,540 in 2014. (ROI 17) Without valid evidence to the contrary, it can be presumed that Respondent's interest in this time-share was an asset to be disclosed on her 2012 and 2014 CE Form 6s, respectively.

In addition, Anderson advised that Respondent had a maintenance fee debt of \$1,197.41 at the end of 2014 owed to Westgate Resorts. (ROI 17) Depending on Respondent's interest in this

time-share, the maintenance debt could be a liability that should have been disclosed by Respondent on her 2014 CE Form 6.

2. Benjamin La Luzerne, in-house counsel for Diamond Resorts International, advised that Respondent and her husband have owned a deeded time-share interest in a condominium in Liki Tiki Village Resort in Daytona Beach since 2001. (ROI 18, Exhibit C) The property was purchased for \$11,650. (ROI 18) Without valid evidence to the contrary, it can be presumed that Respondent's interest in the time-share was an asset to be disclosed on her 2012-2014 CE Form 6s, respectively.

3. Georgeta Onciu Aguiar, paralegal with Wyndham Worldwide Corporation, provided documents related to the purchase of a vacation ownership interest in a time-share at Fairfield Daytona Beach at Ocean Walk II, for occupancy in odd-numbered years. (ROI 19, Exhibit D) The Purchase and Sale Agreement, dated April 25, 2004, reflects a sale price of \$11,200 and is between Fairfield Resorts, Inc. and "Kimberly Daniels DBA Spoken Word Ministries." (ROI 19) All documents pertaining to this purchase, including the mortgage, which was satisfied in 2008, are signed by Respondent as "Kimberly Daniels" over the printed name "Kimberly Daniels DBA Spoken Word Ministries." (ROI 19)

4. Aguiar provided documents related to the purchase of a vacation ownership interest in a second time-share at Fairfield Daytona Beach at Ocean Walk II. (ROI 20, Exhibit E) The Purchase and Sale Agreement, dated April 29, 2005, reflects a sale price of \$33,200, and is between Fairfield Resorts, Inc. and "Spoken Word Ministries Kimberly Daniels & Ardell Daniels." (ROI 20) The Purchase and Sale Agreement as well as the Promissory Note, Contract Addendum, Statement of Understanding, Assignment Agreement and Use Restriction, are signed by

Respondent as “Kimberly Daniels” over the printed name “Kimberly Daniels.” (ROI 20)
However, Ardell signed as well. (Exhibit E)

Regarding the two time-shares associated with Fairfield Resorts, Miki Richmond, Manager of the Title Services Department with Wyndham Vacation Ownership, Inc., advised that Respondent owned the time-shares during 2012-2014 and continues to own them.² (ROI 21)
Without valid evidence to the contrary, it can be presumed that Respondent’s interest in these time-shares were assets to be disclosed on her 2012-2014 CE Form 6s, respectively.

According to Wyndham documents, Respondent’s portion of the incurred debts exceeded \$1,000 during 2012-2014 for not paying maintenance fees regarding the time-shares. (ROI 22, Exhibit F) Without valid evidence to the contrary, it can be presumed that Respondent’s portion of the debt for the time-share(s) was a liability to be disclosed on her 2012-2014 CE Form 6s, respectively.

There are items that should have been disclosed which affected the accuracy of Respondent’s disclosure form.

Therefore, based on the evidence before the Commission, I recommend that the Commission find probable cause to believe that Respondent violated Article II, Section 8, Florida Constitution, and Section 112.3144, Florida Statutes.

ALLEGATION TWO

Respondent is alleged to have violated Article II, Section 8, Florida Constitution, and Section 112.3144, Florida Statutes, by filing an inaccurate 2013 CE Form 6, “Full and Public Disclosure of Financial Interests.”

² Richmond advised that Respondent attempted to transfer title of the two properties via a quitclaim deed in 2007; however, the deeds were not valid due to an “insufficient legal description” of the properties. (ROI 21) Respondent attempted the same action in 2016 and received the same result, the quitclaim deeds were rejected. (ROI 21)

APPLICABLE LAW

Article II, Section 8, Florida Constitution, and Section 112.3144, Florida Statutes, as set forth under Allegation One, above.

ANALYSIS

The underlying facts and circumstances relating to this allegation are contained above in Allegation One. See Analysis in Allegation One.

There are items that should have been disclosed which affected the accuracy of Respondent's disclosure form.

Therefore, based on the evidence before the Commission, I recommend that the Commission find probable cause to believe that Respondent violated Article II, Section 8, Florida Constitution, and Section 112.3144, Florida Statutes.

ALLEGATION THREE

Respondent is alleged to have violated Article II, Section 8, Florida Constitution, and Section 112.3144, Florida Statutes, by filing an inaccurate 2014 CE Form 6, "Full and Public Disclosure of Financial Interests."

APPLICABLE LAW

Article II, Section 8, Florida Constitution, and Section 112.3144, Florida Statutes, as set forth under Allegation One, above.

ANALYSIS

The underlying facts and circumstances relating to this allegation are contained above in Allegation One. See Analysis in Allegation One.

There are items that should have been disclosed which affected the accuracy of Respondent's disclosure form.

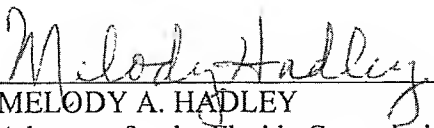
Therefore, based on the evidence before the Commission, I recommend that the Commission find probable cause to believe that Respondent violated Article II, Section 8, Florida Constitution, and Section 112.3144, Florida Statutes.

RECOMMENDATION

It is my recommendation that:

1. There is probable cause to believe that Respondent violated Article II, Section 8, Florida Constitution, and Section 112.3144, Florida Statutes, by filing an inaccurate 2012 CE Form 6, "Full and Public Disclosure of Financial Interests."
2. There is probable cause to believe that Respondent violated Article II, Section 8, Florida Constitution, and Section 112.3144, Florida Statutes, by filing an inaccurate 2013 CE Form 6, "Full and Public Disclosure of Financial Interests."
3. There is probable cause to believe that Respondent violated Article II, Section 8, Florida Constitution, and Section 112.3144, Florida Statutes, by filing an inaccurate 2014 CE Form 6, "Full and Public Disclosure of Financial Interests."

Respectfully submitted this 6th day of August, 2018.


MELODY A. HADLEY
Advocate for the Florida Commission
on Ethics
Florida Bar No. 0636045
Office of the Attorney General
The Capitol, PL-01
Tallahassee, Florida 32399-1050
(850) 414-3300, Ext. 3704